IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS. 58, 59 AND 60 OF 2007

Mr. Siddesh S. Gawas,
House No.145/5. Nr. Umesh Garage,
Opp. Shetye Sales Syndicate,
Karraswada, Mapusa Goa
Presently lodged in Sub-Jail Sada,
Vasco-da-Gama. ... Applicant

versus

1. The Goa State Co-operative
   Bank Ltd., Korgao Branch
   through its Manager,
   Korgao Pernem-Goa.

2. State of Goa,
   through the Public Prosecutor,
   Panaji-Goa. ...
Respondents

Ms. Asha Dessai, Advocate for the Applicant.

Mr. S. R. Rivonkar, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 19TH OCTOBER, 2007.

ORAL ORDER

These revisions arise from Criminal Cases Nos.1842/04/B, 37/0/05 and 488/P/05/B in which the Applicant/Accused has been convicted under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard the learned Counsel on behalf of both parties.

3. The Applicant/Accused apparently had taken a loan of Rs.4,52,000/- for the purchase of a truck and towards repayment had issued thirteen cheques in the sum of Rs.18,000/- each. Six of the cases filed consequent to the dishonour of the said cheques came to be withdrawn after the accused made the repayment. It appears that in cases Nos. 525/P/05/F/C and 38/P/05/F/C the accused has undergone the sentence and in cases Nos.1631/P/04/B and 584/P/05/B the accused paid the amount due at the appellate stage and the sentence was restricted to fine only which the accused paid.

4. The said loan was taken by the accused for the purchase of a truck and the truck subsequently met with an accident and eventually had to be sold for a sum of Rs.60,500 /- on 24-8-2006.

5. In case No.1824/04/B the accused was sentenced to undergo four months of S.I. and to pay a compensation of Rs.20,000/- and in default to undergo three months S.I. In C. C. No.37/0/05 the accused was sentenced to undergo S. I. for two months and pay compensation of Rs.25,000/- in default to undergo one month S.I. In case No.488/P/05/B the accused was sentenced to undergo four months S.I. and to pay compensation of Rs.20,000/- in default to undergo three months S.I. As far as this case is concerned, the accused has deposited the amount of compensation of Rs.20,000/-, before this Court. The accused has to deposit balance compensation of Rs.45,000/- and it is stated on behalf of the

accused that he is unable to deposit the said amount. The accused has already undergone a sentence of 10 months and 21 days, and there is no dispute about it . The Applicant/Accused has stated that while he was on bail during the pendency of his appeals before the Sessions Court he worked hard and managed to save Rs.40,000/- and paid the amount in two cases which were then pending before the Sessions Court.

6. From the sentence imposed against the accused in the said three cases it can be seen that the same was disproportionate, for the same amount of the cheque and even otherwise it was also disproportionate to the amount due on each of the cheque. On behalf of the Complainant it has been stated that since the accused has already undergone 10 months and 21 days of imprisonment his further detention will not help the Complainant-Bank to recover the balance amount of Rs.45,000/- due to the Complainant.

7. Considering the facts and circumstances of the case, where the accused had taken a loan from the Bank with a view to purchase a truck and considering that the accused was unable to make the payment of instalments because his truck met with an accident and further considering that the accused has made every effort to work and pay the amount due to the Complainant-Bank even when his appeals were pending, it would be in the interest of justice to reduce the sentence undergone by the accused as a period of substantive sentence as well as sentence imposed for default of payment of fine considering that each of the three cheques were only for an amount of Rs.18,000/- . In other words, the accused will not be required to

undergo any further sentence in connection with the said three cases. Nevertheless, the accused would be required to pay the amount of compensation of Rs.45,000/- to the Complainant-Bank. It has been submitted on behalf of the Complainant that recovery proceedings for the entire loan amount due by the accused are pending and the said amount of Rs.45,000/- would be recovered in the said proceedings. Complainant would be at liberty to take such steps as advisable in law to recover the balance amount of compensation of Rs.45,000/- due in the aforesaid three cases. As already stated, the accused will not be required to undergo any further sentence.

8. Revision Applications are allowed on the above terms. The amount of Rs.20,000/- deposited before this Court shall be paid to the Respondent No.1-Complainant.

N. A. BRITTO, J.

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